

REMARKS

I. INTRODUCTION

In response to the Office Action dated November 23, 2009, no claims have been canceled, amended or added. Claims 1-33 remain in the application. Entry of these remarks, and re-consideration of the application, is requested.

II. PRIOR ART REJECTIONS

On page (3) of the Office Action, claims 1-2, 12-13 and 23-24 are rejected under 35 U.S.C. §102(e) as being anticipated by Chaudhuri et al., U.S. Patent No. 6,363,371 (Chaudhuri). On page (4) of the Office Action, claims 3, 14 and 25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. On page (4) of the Office Action, claims 4-11, 15-22 and 26-33 are also objected to because they depend on claims 3, 14 and 25, but otherwise are allowable.

Applicant's attorney respectfully traverses these rejections.

The Office Action was mailed after a Decision on Appeal was rendered, wherein the Decision on Appeal completely reversed the Examiner's final rejections. However, the Office Action fails to comply with the requirements of M.P.E.P. §1214.04, which states:

A complete reversal of the examiner's rejection brings the case up for immediate action by the examiner. If the reversal does not place an application in condition for immediate allowance (e.g., the Board has entered a new ground of rejection under 37 CFR *41.50(b)<), the examiner should refer to the situations outlined in MPEP § 1214.06 for appropriate guidance.

The examiner should never regard such a reversal as a challenge to make a new search to uncover other and better references. This is particularly so where the application or ex parte reexamination proceeding has meanwhile been transferred or assigned to an examiner other than the one who rejected the claims leading to the appeal. The second examiner should give full faith and credit to the prior examiner's search.

If the examiner has specific knowledge of the existence of a particular reference or references which indicate nonpatentability of any of the appealed claims as to which the examiner was reversed, **he or she should submit the matter to the Technology Center (TC) Director for authorization to reopen prosecution under 37 CFR 1.198 for the purpose of entering the new rejection.** See MPEP § 1002.02(c) and MPEP § 1214.07. **The TC Director's approval is placed on the action reopening prosecution.**

Applicant's attorney notes that the Technology Center Director has not authorized the Examiner to reopen prosecution and the Technology Center Director's approval has not been placed on the Office Action. Consequently, Applicant's attorney submits that the Office Action is improper.

Record is made of telephone interviews between Applicant's attorney, Examiner Nguyen and Supervisory Patent Examiner Mofiz that occurred on January 21, 2010, wherein Applicant's attorney noted that the Office Action lacked the authorization of the Technology Center Director, and requested that such authorization be obtained. Applicant's attorney has not received an Office Action with the authorization of the Technology Center Director, and thus this response is being submitted before the expiration of the three month time period for responding.

III. CONCLUSION

In view of the above, it is submitted that this application is now in good order for allowance and such allowance is respectfully solicited. Should the Examiner believe minor matters still remain that can be resolved in a telephone interview, the Examiner is urged to call Applicant's undersigned attorney.

Please consider this a PETITION FOR EXTENSION OF TIME for a sufficient number of months to enter these papers, if appropriate. Please charge all fees to Deposit Account No. 09-0460 of IBM Corporation, the assignee of the present application.

Respectfully submitted,

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